CSA
Connecticut Subcontractors Association
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Testimony of **William Flynn**
President, Connecticut Subcontractors Association
Re: Raised Bill No. 5379—
"An Act Concerning Offers of Compromise in Arbitration of Construction Contracts"
COMMITTEE ON JUDICIARY-- March 26, 2010

My name is Bill Flynn. I am the President and a founding Board Member of the Connecticut Subcontractors Association, a trade association that represents all segments of the Connecticut construction subcontracting industry. I also am Vice-President of Electrical Contractors, Inc. of Hartford, one of the largest electrical contractors in the State. Our construction firm has performed dozens of projects for the State DPW, many towns and cities, and a variety of large private owners in our state.

Members of the Connecticut Subcontractors Association (CSA) support the passage of Raised Bill No. 5379, "An Act Concerning Offers of Compromise in Arbitration of Construction Contracts."

Unfortunately, many Connecticut subcontractors find it necessary to pursue payment of contract sums owed, as well as other disputes, in arbitration proceedings that are required by our contracts. The present bill addresses two important concerns for trying to settle these cases short of full-blown arbitration hearings: (1) providing for an "offer of compromise" in construction arbitration proceedings, and (2) clarifying the intent of Conn. Gen. Stat. §42-158m that disputes on Connecticut projects-- including mediation and arbitration—must be resolved in Connecticut, under Connecticut law.

There are no formal procedures available for filing an "offer of compromise" in an arbitration. Since most significant construction contracts require arbitration instead of a court case, the existing offer of compromise procedures that are available in lawsuits do not apply for contractors. It makes perfect sense to allow contractors, owners, architects, or other parties to construction arbitrations to file an offer of compromise and receive interest and attorney's fees if the other party does not accept the offer, and the award in the case ends up favoring the offering party. This process would encourage settlements, and also provide extra compensation by way of interest and attorney's fees for the party who prevailed AND wanted to settle on a realistic basis all along.

Construction arbitration proceedings are just as costly as court cases. There is no sound reason why parties to a construction arbitration should not benefit from similar mechanisms that encourage settlements in court. Section 1 of the Raised Bill establishes this mechanism in a sensible and practical way.

Section 2 of the Raised Bill clarifies Conn. Gen. Stat. §42-158m, which presently requires that all disputes arising out of construction projects in Connecticut be "adjudicated" under Connecticut law and in Connecticut. This law has been extremely successful in protecting Connecticut contractors from getting dragged off to litigation in far-off states by out-

of- state contractors or developers who impose their contract language on us. The present bill makes it clear that Connecticut law and venue applies to all disputes arising out of Connecticut construction projects—for mediation and arbitration as well as litigation.

Farness and common sense dictates that any dispute that arises out of a Connecticut construction project—be it submitted to mediation, arbitration or litigation—should be resolved in Connecticut and under Connecticut law.

Thanks very much to the Judiciary Committee for considering this important legislation.